IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTIETH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 14241 of 2004

Between:

K.Srinivas, S/o.Mohan Rao,
R/o.Main Bazar, Kothagudem, Khammam Dist.

... PETITIONER

AND

1 The Commissioner of Proh & Excise, Govt. of A.P.at Hyderabad.
2 The Dy.Commissioner for Proh. & Excise, Warangal Division at Warangal.
3 The Proh. & Excise Suptd.,Khammam Khammam Dist.
4 The Proh. & Excise Inspector, SHO, Kothagudem Khammam Dist.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus, or any other appropriate writ, order or direction, declaring the action of the respondents in not refunding to the petitioner the sale proceeds amount of Rs.80,000/- of Tata Motor Van (Goods carriage) bearing No.AP20U-522, relating a sale cum confiscation certificate Dt.02-06-99 of 3rd respondent as illegal, arbitrary, contrary to law and further direct the respondents to refund the amount of Rs.80,000/- along with interest @ 18% p.a., and pass.

Counsel for the Petitioner: MR.T.AMARNATH GOUD

Counsel for the Respondents 1 to 4: GP FOR PROHIBITION & EXCISE

The Court made the following Order:

ORDER:

Petitioner seeks a Writ of Mandamus declaring the action of the respondents in not refunding to the petitioner the sale proceeds of Rs.80,000/- of sale cum confiscation of Tata Motor Van (Goods Carriage) bearing No.AP20U-522, as arbitrary and illegal.

The petitioner claims to be the owner of Tata Motor Van (Goods Carriage) bearing No.AP20U-522. The said vehicle was seized by the Prohibition and Excise Inspector Station House Officer, Kothagudem, on 31.07.1995 on the ground that when the vehicle was checked by the Excise officials, it was found that one Mr. Banoth Kishan, who was traveling in the vehicle, was found to be in possession of Black Jaggery, Alum, Ammonium Chloride and 20 litres of ID.Liquor in two plastic cans. On the basis of the same, Cr.No.287/94-95 was registered, in which the said Mr. Banoth Kishan and two other persons were shown as accused. Thereafter enquiry was conducted under Section 46 of Andhra Pradesh Excise Act and an order was passed on 01.12.1995 confiscating the vehicle in question. Against the said order passed by the Deputy Commissioner of Prohibition & Excise, the petitioner preferred an appeal to the Commissioner of Prohibition & Excise, but the same was dismissed by the first respondent herein on 25.01.1997. The petitioner states that thereafter the third respondent on 02.06.1997 disposed of the confiscated

vehicle in open auction for a sum of Rs.80,000/- and the sale proceeds were deposited with the excise department.

While so, on the basis of the charge sheet filed by the fourth respondent in Cr.No.287/94-95 under Section 34 (a) (e) of Andhra Pradesh Excise Act, the Judicial First Class Magistrate, Kothagudem, tried the case in C.C.No.1305 of 2004 and ultimately the said proceedings ended in acquittal by judgment dated 07.07.2004.

This writ petition is filed contending inter alia that in view of the judgment in CC.No.1305 of 2004 acquitting all the accused holding that the prosecution failed to prove the alleged offence, the order of confiscation cannot be sustained and therefore, the petitioner is entitled to the refund of the sale proceeds of the vehicle. The petitioner states that he made a representation to that effect before the respondents but the same has not been considered. Hence, this writ petition seeking a declaration that the action of the respondents in not refunding the sale proceeds of Rs.80,000/- together with an interest @ 18% p.a. is arbitrary and illegal.

I have heard the learned counsel for the petitioner and learned Government Pleader appearing for respondents.

Learned counsel for the petitioner placed reliance on the decisions of the Supreme Court in **SULEKH CHAND & SALEK CHAND v. COMMISSIONER OF POLICE AND OTHERS** and also a Full Bench decision of this Court in **V. NARAYANA RAO v. STATE OF ANDHRA PRADESH AND OTHERS** and contended that in view of the acquittal of all the accused in the criminal proceedings the petitioner is entitled for refund of the sale proceeds.

It is to be noted that the petitioner herein was not a party to the criminal proceedings, which ended in acquittal. Moreover, the criminal proceedings were initiated under Section 37 of the A.P. Excise Act, 1968 (for short, 'the Act'), which provides penalty for adulteration for confiscation of any property which

was seized or detained under the provisions of the Act. There is nothing in the Act or in the rules made thereunder to show that the action taken under Section 46 of the Act is dependant on the result of the criminal proceedings under Section 37. As a matter of fact, Section 46 contains a non-obstant clause. Thus, it is clear that the confiscation proceedings under Section 46 of the Act are independent of the proceedings under any other Section of the Act.

For the aforesaid reasons and particularly since the order of confiscation has already become final, I am of the view that the fact that subsequently the criminal proceedings against the driver and the occupant of the vehicle were ended in acquittal in the prosecution launched under Section 37 is immaterial and the same does not in any way effect the validity of the action that has already been taken under Section 46 of the Act.

In the circumstances, the contentions of the petitioner are without any substance. The above decisions cited by the learned Counsel for the petitioner are clearly distinguishable on facts and they are of no assistance to the case on hand.

Hence, the Writ Petition is devoid of any merit and is accordingly dismissed. No costs.

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(G. ROHINI, J)

August 20, 2004

Dsk/Gbs

To

1 The Commissioner of Prohibition & Excise, Government of Andhra

Pradesh,Hyderabad.
2 The Deputy Commissioner for Prohibition & Excise, Warangal Division

Warangal.
3 The Prohibition & Excise Superintendent, Khammam, Khammam Dist.
4 The Proh. & Excise Inspector, SHO, Kothagudem Khammam Dist.

5 Two CCs to GP For Prohibiton & Excise, High Court Buildings,

Hyderabad.

6 Two CD Copies.